



Character and suitability guidelines consultation

Analysis of responses

June 2007

In its consultation on the character and suitability guidelines, the Solicitors Regulation Authority (SRA) Board started from the presumption that there should never be an absolute bar to admission as a solicitor, but that certain transgressions are so serious that there should be a presumption that the character and suitability criteria would not be met unless in exceptional circumstances.

The guidelines focus on five key elements:

- honesty and trustworthiness
- compliance with legal and regulatory requirements
- ability to manage responsibly financial affairs
- diminishing public confidence in the solicitor's profession
- a risk that the individual's admission could cause harm to members of the public, the profession or him or herself.

Against each criterion, the consultation sought views on what exceptional circumstances might justify admission; and what evidence should be sought to demonstrate exceptional circumstances. The consultation questions are available at www.consultations.sra.org.uk.

Responses

The consultation was published on the SRA's website in the form of a questionnaire with multi-choice questions and free-text boxes. Sixty responses were received through the online questionnaire. A further nine responses were received electronically in free-text form.

Among those responding were the Master of the Rolls (MR), to whom an applicant refused admission on the grounds of character and suitability has an ultimate right of appeal, the Law Society (LS), the Legal Complaints Service (LCS), the Bar Council of England and Wales, the Association of Women Solicitors (AWS), the Sole Practitioner Group (SPG), the Institute of Legal Executives (ILEX) and the Society of Legal Scholars (SLS).

Broadly, those responding considered that the criteria used by the SRA to develop the guidelines were correct, although some helpful observations and suggestions for improvement were offered.

Honesty and trustworthiness

The draft guidelines state that the SRA will not have confidence that the applicant is honest and trustworthy, unless there are exceptional circumstances, if the applicant has convictions for offences involving dishonesty and/or deceived or sought to deceive others, eg academic authorities or employers.

Almost unanimously, those responding agreed with this proposition.

The LS considered that reference only to convictions for dishonesty is too restrictive and that the SRA should be made aware of all convictions. Other respondents considered that applicants should be required to disclose cautions and/or pending investigations. As stated earlier, applicants are required to disclose all convictions,

including spent convictions and cautions and CRB checks are made in every case. Non-dishonesty offences are referred to later in the guidelines.

The AWS drew attention to civil sanctions, such as a fine by a regulator for offences of dishonesty (eg insider dealing) or a sanction in employment law, such as dismissal, where the employment relationship has been compromised by an act of dishonesty. ILEX drew attention to similar examples. It is likely that these suggestions are captured by the second of the five criteria: compliance with legal and regulatory requirements.

Views were sought as to whether any offences were so serious as to constitute an absolute bar to admission. A sizeable majority (86%) considered that, for some offences, there should be an absolute bar to admission. This included the Bar Council and ILEX.

Those who considered that there should be an absolute bar gave examples such as every form of conviction for dishonesty, fraud, false accounting, theft, and abuse of trust or committed against a vulnerable individual, murder, sex offences, violence, and offences against children. There also appeared to be some confusion between the criteria for admission and the circumstances in which solicitors might be struck from the roll.

The MR and the LS considered that there should not be an absolute bar to admission.

The consultation sought views as to the evidence that should be provided in support of exceptional circumstances. There was overwhelming support for the SRA's approach to evidence required. Of those who disagreed, some disagreed in principle that there should ever be exceptional circumstances; others considered that weight should be given to the applicant's account—dalongside other evidence; others suggested that evidence of "good works" and of "multi assistance to the community" should be considered.

Compliance with legal and regulatory requirements

The draft guidelines state that the SRA would not have confidence in the applicant's ability and/or willingness to comply with legal and regulatory requirements, other than in exceptional circumstances, if the applicant has been convicted of a criminal offence (including spent convictions); has failed to disclose information to a regulatory body when required to do so, or has provided false or misleading information; has breached the requirements of a regulatory body; or has failed to comply with the reasonable requests of a regulatory body.

Again, the overwhelming majority of those responding to the consultation (82% to 92%), including the MR, agreed that this was the correct approach. However, the MR cautioned that:

"Conviction or rule breaches etc, ought to be taken as strong evidence of unsuitability. However, care should also be taken to assess the circumstances that gave rise to the conviction, breach etc, mitigating circumstances and explanations as to how or why the conviction or breach arose in order to ascertain whether, in fact, they are properly indicative of unsuitable character... Care should be taken not to

assume that all breaches are of equal weight and all automatically render an individual unsuitable for admission."

Others commented that "*'criminal offence' is too wide. Minor traffic violations should be excluded*" and "*'regulatory' is too wide. Could include so many petty things that wouldn't impinge on character.*"

Here again, 83% of those responding thought that some incidents were so serious as to preclude admission for life. Comments included: "*there should be no tolerance of any default of this type*" and "*once convicted end of story*".

There was overwhelming support for the evidence to be provided to demonstrate exceptional circumstances.

Ability to manage responsibly financial affairs

The draft guidelines state that the SRA will not have confidence that the applicant is able to manage his or her own and clients' affairs, unless there are exceptional circumstances, if the applicant has been made bankrupt, has entered into individual voluntary arrangement or has unmanageable debts arising from the applicant's recklessness, incompetence or dishonesty; the applicant has deliberately sought to avoid responsibility for their debts; there is evidence of dishonesty in relation to the management of finances.

Again, there was overwhelming support for these criteria, with the proviso that none of these circumstances should act as an absolute bar. However, around 18% did not agree that bankruptcy, IVA or unmanageable debts should act as a barrier to admission. Comments included: "*debt is such a big problem in our society at the moment that unless dishonesty is involved, I am not sure why a solicitor should be treated any different. Managing someone else's money is different to managing your own... Richer people have more people to rely on to bail them out of financial difficulty... This may result in a class distinction which is unfair...*"

The LS commented: "*The approach to bankruptcy and IVA appears too restrictive. It does not acknowledge changed public perception and the increasing use of bankruptcy for general debt management, for example, by students seeking to remove debts incurred during training. Public policy now discourages attaching a very strong stigma to bankruptcy.*"

One respondent commented that, in addition to these criteria, prompt payment of fines, maintenance payments and credit references ought also to be taken into account.

Only 80% of those responding agreed that the SRA should consider exceptional circumstances to help determine the extent to which management of financial affairs should act as a barrier to admission. Of those who disagreed, some considered that greater flexibility ought to be applied, while others views were that financial mismanagement and/or bankruptcy should be an absolute bar, unless, perhaps, all creditors have been paid in full.

The majority of those responding agreed with the suggested evidence to be presented in support of exceptional circumstances. Some respondents suggested that further evidence should be obtained, for example, a bank reference and/or

bank/credit card statements, evidence of payment of council tax and utility bills, the extent to which third parties have been adversely affected and their views, evidence relating to living beyond means.

Diminishing public confidence in the solicitor's profession

The draft guidelines state that the SRA will assume there is a risk that public confidence in the profession would be diminished by the admission of an individual who has served a prison sentence, who remains on licence, or who is or has been listed on the sexual offences register; the admission of an individual who has misused his or her position, particularly if associated with the provision of legal services, to obtain any form of improper advantage; the admission of an individual who has been responsible for dishonest or violent behaviour; the admission of an individual who has been convicted of offences associated with obstructing the course of justice; the admission of an individual who has been convicted of a racially motivated offence.

Again, there was overwhelming support for the SRA's draft guidelines, ranging from 98% agreement for misuse of position, to 87% for conviction for a racially motivated offence. By those who disagreed, the SRA was urged to look at the severity of each case. For example: "I am not happy that all these things some of which are very minor are lumped together".

Eighty-five per cent of those who responded to the consultation agreed that exceptional circumstances should be taken into account when considering admission to the profession. The majority of those who disagreed considered that there should be no exceptions, with one respondent commenting: "being involved in the Law is so important that people with incidence of low ethics cannot be allowed to practice."

When considering the evidence to be provided as demonstration of exceptional circumstances, 88% agreed with the SRA's draft guidelines that independent accounts of the convictions and behaviours giving rise to the concerns should be obtained, eg sentencing remarks. Of those who disagreed, some did so because they considered there should be no exceptions. Others suggested that reliance should not be placed solely on the applicant's explanation and that behaviour in prison/on parole and/or efforts to compensate victims should be taken into consideration.

The risk that the individual's admission could cause harm to members of the public, the profession or himself/herself

The draft guidelines state that, in the absence of exceptional circumstances, the SRA will consider there is a risk that the individual's admission could cause harm to members of the public, the profession or him or herself if there is evidence that the applicant is or has been dependent on alcohol or other drugs; that the applicant's mental health or exposure to stressful situations can seriously impair his or her judgment, and/or ability to manage his or her work and/or professional relationships; that the applicant has been violent with colleagues or clients.

Only 68% agreed that dependency, or previous dependency on drugs or alcohol should be a determining factor. Eighty-one per cent agreed that the impact of mental health or exposure to stressful situations on an applicant's ability to manage work or

professional relationships should be a determining factor, while 93% agreed that violence with clients or colleagues would be indicative of a risk that admission could cause harm to the public, the profession or the applicant. In particular, the LS disagreed with each of the propositions

While agreeing with the propositions, the MR commented that *“care should be taken to ensure that the criteria if applicable actually demonstrate a relevant risk in the individual circumstances of the case. Meeting the criteria may be indicative of a risk but not determinative”*.

Of those disagreeing, most concern was expressed in relation to former dependency on alcohol or other drugs. For example, the AWS commented: *“dependency on illegal (Class A) drugs is fair, however dependency on soft drugs or alcohol (the latter being legal) arguably, is not.”*

The AWS went on to comment that understanding and discretion is shown to those admitted as solicitors, so it may be unreasonable, inconsistent and/or unfair to exclude applicants for admission on these grounds.

There appeared to be general recognition that this is a difficult area, with difficult balances to be struck, making it essential that each application is dealt with on its particular merits.